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Second Session

SECOND COMMITTEE

PROVISIONAL SUMMARY RECORD OF THE THIRD MEETING

Held at the Parque Central, Caracas,
on Thursday, 11 July 1974, at 9.30 a.m.

Chairman:	Mr. AGUILAR	Venezuela
Rapporteur:	Mr. NANDAN	Fiji

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AS THIS RECORD WAS DISTRIBUTED ON 16 JULY 1974, THE TIME-LIMIT FOR CORRECTIONS WILL BE 23 JULY 1974.

The co-operation of participants in strictly observing this time-limit would be greatly appreciated.

ORGANIZATION OF WORK

The CHAIRMAN, announcing the programme of work, said that the Committee would hold four morning meetings the following week, another four the week after, and thereafter five morning meetings every week until the penultimate week of the Conference. That programme presupposed that there would be 27 working days; but meetings could be held in the afternoons, if that proved necessary, and even on holidays.

He and the other officers of the Committee stood ready to organize and preside over informal meetings of delegations holding related views for the purpose of removing any differences of opinion that might exist.

TERRITORIAL SEA (A/9021) (Vols. III and IV); A/CONF.62/29; A/CONF.62/C.2/L.3, L.4 L.5 and L.6)

Mr. JÄNICKE (Federal Republic of Germany) said he approved of the organization of work envisaged for the Second Committee. It would enable the Committee to identify the areas of agreement and disagreement, to begin negotiations with a view to reconciling differences of opinion and to adopt final decisions within the framework of an over-all agreement covering all aspects of the law of the sea.

The Federal Republic's attitude towards the concept of the territorial sea and the law of the sea in general was influenced by certain features of its geography and economy, since its trade was very much dependent on free access to the open sea. That was why his country must emphasize the importance of preserving as much ocean space as possible for common use.

His country could accept the concept of a territorial sea not exceeding 12 nautical miles, measured from reasonable baselines. In any event, that implied a clear definition of the rights and obligations inherent in the concept of "innocent passage". The draft articles submitted by the United Kingdom (A/CONF.62/C.2/L.3) provided a sound basis for discussion, and the Federal Republic supported the concept of a territorial sea as it appeared in that proposal.

His country believed that it was vital to maintain freedom of passage and overflight through or over straits, many of which would fall within the area of the territorial sea if the 12-mile limit was accepted. Of course, any proposal on the subject should take into account the legitimate interests of the States bordering those straits. With regard to the concept of the economic zone, his delegation was prepared to recognize, within certain limits, the reasonable claims of coastal States - and, in

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(Mr. Jänicke, Federal Republic of Germany)

particular, of the developing countries - with regard to the preservation of the living resources off their coasts and the acquisition of preferential rights over those resources; but it also considered that equity and their interests required that the States which depended on those resources for their supply of food should maintain the right of access to them under an internationally administered régime, on the understanding that the zone would retain its legal status of an integral part of the high seas.

In conclusion, he stated that his delegation was prepared to consider any proposal that respected the legitimate interests of all States.

Mr. RANJEVA (Madagascar) observed that the majority of delegations that had spoken in the debate had referred to the concept of an economic zone or patrimonial sea without, however, taking it to its logical conclusion, namely, the identification of the economic zone with the territorial sea.

It was not possible, from an analysis of the jurisdiction of States over the different zones, to establish a distinction between the territorial sea and the economic zone. That meant that a compromise solution could become a source of conflict, and it was therefore necessary for the Conference to seek new approaches that would enable it to reach an agreement.

His delegation considered that the delineation of maritime areas would only prove possible if due account was taken of the development and protection of the community thanks to the effectiveness of the sovereign power of the State. The development of war arsenals by States meant that the traditional limits of the territorial sea had lost their original purpose, while the dictates of economic development required a national maritime zone that was as vast as possible.

Taking into account the circumstances, and in order to meet the needs of the community by defining a suitable legal régime for maritime areas, his delegation proposed that there should be a new division of maritime space into the national maritime zone and the international maritime zone. The establishment of the national maritime zone was linked to the requirements inherent in the sovereignty of the coastal State. Furthermore, the Conference should give up the idea of differentiating between the territorial sea and the economic zone in order to simplify the problem. With the new division he was proposing, a State's sovereignty, which, for the Malagasy delegation consisted of the rights and obligations derived from international law,

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(Mr. Ranjeva, Madagascar)

would extend over the whole of the national maritime zone. Such sovereignty would not, however, relieve the State of its obligations to observe existing legal rules.

Madagascar therefore considered that the power to determine the breadth of the national maritime zone should necessarily be consonant with the national and discretional jurisdiction of the sovereign State, which alone was entitled to lay down the régime of activities that might be carried out within the limits of the national maritime zone and to define legislative policy on the subject although it was not entitled to take arbitrary measures.

The rules applicable to the zone should be the provisions of internal law, and only the coastal State could decide whether or not a plurality of régimes was fitting within its national maritime zone. The Conference should provide for a procedure for publishing such provisions and giving other States the opportunity to challenge their validity.

His delegation considered that the national maritime zone should extend for 200 nautical miles, i.e., the breadth for the exclusive economic zone sought by the non-aligned countries and the Organization of African Unity. That seemed to be a reasonable distance and would not raise any practical difficulties. In order to make the national maritime zone an effective reality, Madagascar was proposing that the highest points of the geographical perimeter of the place in which the economic and security activities of the coastal State were carried on should be adopted as the points for tracing the baseline of the geometrical figure. His delegation nevertheless believed that a national maritime zone, if established, could not lawfully be used for the benefit of any non-national communities in the territories in question.

Beyond the 200-mile limit, Madagascar proposed the establishment of an international maritime zone, in which the coastal State should play a special role. By reason of its location, the coastal State had to assume functions it would discharge on behalf of the international community and would therefore be obliged to supervise a specific number of activities that were carried out in that zone. The coastal State must be granted the right of claim over any resources and of prosecution of any unlawful activities that originated in the national maritime zone, following notification to the international authority.

In conclusion, he stated that a working document would be issued containing the details of his proposal.

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Mr. HERRERA (Honduras) said that Honduras was not party to any of the Geneva Conventions on the law of the sea; it had participated as an observer in the Sea-Bed Committee; and, at the regional level, it had signed the Santo Domingo Declaration. Honduras had coastlines on the Atlantic and Pacific oceans, and had geographical characteristics that would require special legal regulation. Its territorial sea extended for 12 nautical miles from the low-water-line except in those places where the coastline was deeply indented or broken, or where there were islands in the immediate vicinity. In the Atlantic ocean, at a distance of less than twice the breadth of the territorial sea, there was a fringe of islands which constituted a single geographical whole, the department of Las Islas de la Bahía. Those islands had always been regarded as part of the mainland of Honduras, which considered they formed a coastal archipelago and maintained that the baseline of the territorial sea was, in that sector, the line between the mainland and the corresponding points on those islands, and that consequently the waters between those lines were internal waters.

Honduras was one of three coastal States bordering on the Gulf of Fonseca in the Pacific Ocean. That gulf was regulated exclusively by existing delimitations and agreements between the coastal States. The legal concept contained in article 7 of the Geneva Convention on the Territorial Sea and the Contiguous Zone would be applicable to that bay but for the exception laid down in that article, i.e., that it related only "to bays the coasts of which belong to a single State" and that it would not apply to so-called "historic" bays. He regarded the latter provisions as unacceptable because of its discriminatory nature. It was discriminatory to exclude bays which bordered the coasts of various States when, as in the present case, all the coastal States maintained that the waters of the bay were internal. Although there was no established legal norm, the status of that bay had been accepted by the coastal States. It had never been maintained that the entrance to the Gulf of Fonseca was an international strait, which showed that the legal unity of all parts of the bay was generally accepted. Moreover, there was no valid reason for excluding from the legal concept of bays the so-called "historic" bays. His delegation therefore maintained that the traditional concept of "historic" bays should be revised because it had been elaborated in response to a former need for a legal definition of bays under the exclusive competence of the coastal State.

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(Mr. Herrera, Honduras)

In connexion with the question of the outer limit of the territorial sea, he said that he considered the arc of a circle method best suited to the different geographical characteristics of different coastlines and also the most desirable since it would facilitate navigation. With regard to the delimitation of the limits between the territorial sea of Honduras and that of adjacent States, his delegation believed that the system that should be used, unless otherwise agreed by the parties concerned, was that of the median line equidistant from the closest points on the baseline of the adjacent territorial seas, which in the Pacific ocean was the line between the geographical points in the entrance to the Fonseca Gulf and in the Atlantic ocean the line following the general direction of the coast including the archipelago of las Islas de la Bahía. Honduras recognized the traditional concept of the territorial sea and the right of "innocent passage" of ships of any nationality; but the concept of "innocent passage" applied to navigation within the territorial sea and not within the internal waters of a State. That was important in connexion with the provision of article 5 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, which ignored the difference between two areas which were basically different because the principle of innocent passage did not apply to one of them.

He stressed that his delegation's position on the breadth of the territorial sea was indissolubly linked to the right of the State in an area in which it would control, protect and exploit resources - an area extending for 200 nautical miles from the baseline of the territorial sea of Honduras.

Mr. GOERNER (German Democratic Republic) said that, in the view of his delegation, the rules of the Geneva Convention on the Territorial Sea should in principle be included in the new Convention on the Law of the Sea. With regard to the question of the delimitation of the territorial sea, his delegation believed that the rules contained in articles 3 to 13 of the Convention on the Territorial Sea should apply in future as they were in keeping with traditional practice. Since the Second Conference on the Law of the Sea, when only one more vote would have been needed to approve the proposal submitted by the USSR for limiting the breadth of the territorial sea to a maximum of 12 nautical miles, almost 100 of the 120 coastal States had recognized the 12-mile limit, which showed that that limit was in the interests of States with different social systems, different levels of development and different geographical locations. The rule according to which each State had the right to establish the breadth of its territorial sea within limits not exceeding 12 miles

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(Mr. Goerner, German Democratic Republic)

measured from the baseline was also adequate from the points of view of the security of the coastal State and of international navigation. No special geographical situation and no political or economic pretext could justify the extension of the territorial sea beyond the 12-mile limit admissible in international law. The interests of the various coastal States in the utilization of the resources of an area beyond the 12-mile limit of the territorial sea were covered fully by the concept of the economic zone.

The question of the contiguous zone was of special importance, particularly for States with a territorial sea of less than 12 miles, which included the German Democratic Republic, whose territorial sea was three miles wide. The new Convention on the Law of the Sea could very usefully incorporate the rule contained in article 24, paragraph 2, of the Convention on the Territorial Sea and the Contiguous Zone.

The rules contained in articles 14 to 22 of the Convention on the Territorial Sea had demonstrated their usefulness in practice, but he nevertheless supported the proposal that the concept of innocent passage as defined in article 14 of that Convention should be clarified and that the new Convention should specify what activities could not be carried on during innocent passage through the territorial sea. That would prevent any future unilateral interpretation of the concept of innocent passage. It would also be very useful to include in the Convention on the Law of the Sea rules providing a more detailed basis for legislation by the coastal State in respect of innocent passage of foreign ships through the territorial sea and the obligation of ships of other States to comply with those laws. He agreed with the ideas contained in article 18 of the United Kingdom draft (A/CONF.62/C.2/L.3). He fully shared the view that the new Convention on the Law of the Sea should also take account of the fundamental difference between innocent passage through the territorial sea and free passage through straits.

Mr. DUDGEON (United Kingdom), introducing the Draft Articles on the Territorial Sea and Straits contained in document A/CONF.62/C.2/L.3, said that his country, which relied on the sea for a large part of its international trade, had a very real interest in the régime for navigation which would apply on the high seas, in the territorial sea and in straits used for international navigation. For that reason, the draft sought to strike the right balance between the interest of the international community in freedom of navigation and the interest of the coastal State or the straits State in protecting itself.

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(Mr. Dudgeon, United Kingdom)

The draft articles, which consisted of two chapters, one on the territorial sea and the other on passage of straits used for international navigation, had been prepared after a careful study of all proposals submitted on those subjects in the Sea-Bed Committee, particularly those contained in documents A/CONF.62/L.18 and A/CONF.62/L.42. So far as straits were concerned, they took into account both the proposals made by the so-called "straits States group" and of the separate proposals of the Soviet Union and the United States.

The chapter on the territorial sea was concerned primarily with the question of navigation through the territorial sea, and in particular, with the balance which had to be struck between the rights of coastal States and those of ships on passage.

The United Kingdom was prepared to accept a territorial sea of 12 miles provided there was a satisfactory régime for passage through straits and the territorial sea.

The draft articles contained no new proposal on the subjects of baselines or the delimitation of the territorial sea between neighbouring States, as the United Kingdom considered that the existing rules on those subjects were generally satisfactory.

At the heart of the proposals on innocent passage was the word "innocent", and article 16 therefore provided a clear definition of that term and specified those activities which would render passage non-innocent. Article 18, for its part, clarified the powers of the coastal State to make laws and regulations relating to innocent passage; that article also provided that foreign ships, when exercising the right of innocent passage, were under the obligation to comply with such laws and regulations.

A number of references had been made in the plenary meeting to the need to compensate the coastal State for pollution damage emanating from passing ships; in that regard, article 28 dealt with responsibility for damage caused by a ship entitled to sovereign immunity.

Chapter III, concerning straits, sought to establish the right balance between the legitimate concerns of the straits State and the interests of the international community at large in the use of the strait for navigational purposes. Accordingly, article 1 defined a concept of transit passage which was consistent with existing practice, and article 6, taken together with article 1, provided rules to avert the dangers emanating from navigation through or flight over the straits by vessels or

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(Mr. Dudgeon, United Kingdom)

aircraft proceeding from one part of the high seas to another through or over waters connecting those two seas. Article 2 provided safeguards for the straits State and imposed strict requirements on ships and aircraft exercising the right of transit passage. Article 3 also provided for the introduction of sealanes and traffic separation schemes in order to regulate navigation in the straits in the interests of safety. In that regard, his delegation believed that the most appropriate body to study such traffic separation schemes would be the Inter-Governmental Maritime Consultative Organization. Article 4 took into account the interests of the straits State in the making of strait-related laws and regulations, with which foreign ships exercising the right of transit passage would be obliged to comply.

The interests of the international community in unimpeded navigation was not so strong in the case of straits used for international navigation between one part of the high seas and the territorial sea of a foreign State as it was in the case of straits linking two parts of the high seas. That difference was recognized in article 8 of the United Kingdom proposals. Straits linking the high seas with the territorial sea of a foreign State would be subject to the régime of innocent passage and not to the régime of transit passage. The same formula would apply to straits formed by an island of the coastal State and connecting two parts of the high seas. In that case, under article 1, paragraph 4, and article 8 of chapter III, a régime of non-suspendable innocent passage would apply.

Mr. LACLETA (Spain), introducing the draft articles contained in document A/CONF.62/C.2/L.6, observed that the basic goal of that proposal was to harmonize points of view, and especially the principles contained in the proposals of Guyana and India (A/CONF.62/C.2/L.4 and L.5). Thus, articles 1 and 2 sought to define concepts that would cover the whole range of possibilities opened up by the principles of 12 and 200 miles. Specifically, article 1 referred to the powers of the coastal State over maritime space beyond national jurisdiction, and article 2 referred to the sovereignty of coastal States over their territorial sea, which in his delegation's view was an area in which the coastal State exercised full authority.

Finally, article 3 aimed at clarifying and interpreting by making it clear that maritime space situated in a strait forming part of the territorial sea was itself territorial sea and therefore subject to the sovereignty of the coastal State.

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Mr. ROSENNE (Israel) said that his delegation's position concerning the nature and characteristics of the territorial sea, including the question of the unity or plurality of régimes in the territorial sea, was based on an approach which conceived of the territorial sea as an extension of the sovereignty of the coastal State into, over and under the sea.

With regard to that band of territorial sea, which should be narrow, and the consequences which would follow upon its enlargement, the main concern of his delegation was the question of freedom of movement. That position, which could be called traditional, or classical, regarded that band of territorial seas as necessary, and justified on functional grounds. He did not believe that a satisfactory reason had been given for the Conference to change a basic concept, which underlay not only a large part of the law of the sea, but also other branches of international law. On the other hand, it should be remembered that the usefulness of the concept of territorial sea as an extension of sovereignty had been sufficiently demonstrated and had important consequences not only in public law but also in private law. For that reason, his delegation doubted whether the introduction of conceptual changes would constitute a positive contribution to the development of the law of the sea.

Finally, he reserved the right of his delegation to revert to that and other aspects of the subject under consideration if necessary.

Mr. LUPINACCI (Uruguay) endorsed the views expressed by the representative of Madagascar. It was preferable to abandon the nomenclature applied to the different maritime zones, and to dispense with names in favour of concepts. The terms territorial sea, patrimonial sea, economic zone, etc., covered a very wide range of ideas which did not lend themselves to rigid classification. Therefore, it was preferable to speak simply of a national and an international zone, since the essential thing was not to give descriptive names to determine the juridical nature of those maritime spaces.

The dilemma facing the Conference lay in the conflict between the concept of sovereignty and that of freedom of the seas. Neither of those two principles had ever predominated absolutely. On the other hand, it was necessary to bear in mind that sovereignty was a whole, consisting of both rights and duties, and those duties constituted the best guarantee for the protection of the rights of third States.

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Mr. SANTOS (Philippines) said that he wished to comment on the United Kingdom proposal contained in document A/CONF.62/C.2/L.3.

The Philippines was an archipelago, and that fact had a decisive influence in its attitude to the problems of the territorial sea. The formula proposed by the United Kingdom for the limits of the territorial sea, contained in chapter II of that proposal, appeared to be somewhat incomplete, since no mention was made of the baselines of an archipelagic State. The document did not take into account the draft article on archipelagos presented to the Sea-Bed Committee by Fiji, the Philippines, Indonesia and Mauritius, nor did it make any proposals concerning the width of the territorial sea.

As to the formula proposed by the United Kingdom for straits, the waters of a strait were obviously not high seas, that is to say, they could be regarded as the territorial sea, or even the internal sea. It was necessary to distinguish clearly between territorial sea and internal sea where straits were concerned. The Philippines could not accept a proposal which did not take that distinction into account since that would suppose that traffic could pass through the internal waters of his country, without any form of restriction. If it was decided that the waters of a strait formed part of the territorial sea, there would appear to be no need to envisage special rules for straits, since application of the right of innocent passage would be sufficient. Consequently, chapter III of the document submitted by the United Kingdom was superfluous.

Finally, his delegation could not accept the right of overflight of territorial or internal seas.

Mr. MBAYA (United Republic of Cameroon) supported the Uruguayan appeal for the elimination of the distinction between the territorial sea and the patrimonial sea, which led to sterile discussions. But the Uruguayan delegation's support of the statement made by the delegation of Madagascar led him to think that there was perhaps some confusion. The Malagasy representative had referred to an exclusive economic zone and to the need to carry that idea to its logical conclusion, implying that it should be accepted as part of the territorial sea, which did not agree with what the representative of Uruguay had urged.

The Malagasy argument was based on security requirements and economic considerations; he wondered whether the security requirements were as convincing

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(Mr. Mbaya, Cameroon)

as they appeared, since technological progress in weapons meant that not only was the three-mile limit out of date, but that even a 200-mile limit would not be sufficient to ensure security. As to the economic considerations, he doubted whether they justified an extension of the territorial sea. His delegation did not feel that they did. The apparently straightforward distinction between a national zone and an international zone could disappear with the introduction of a plurality of régimes. He wondered what difference there was between an economic zone and the territorial sea. In raising those questions, he did not mean to start an argument but to contribute to the work of the Committee, which could not make any progress if delegations did not reach agreement on fundamental issues.

Mr. ARIAS (Peru) said that the distinction suggested by the representative of Madagascar between a national zone and an international zone was interesting. The idea was not new but the Malagasy representative's approach was novel and contained important principles. Discussions had taken place in the Sea-Bed Committee concerning the need to re-examine those established ideas, which had been formulated to fit into a context that no longer existed, and to formulate new concepts, such as the national sea and the international sea, which would bring the rules of the law of the sea into line with present-day conditions. He agreed that discussions on names should be avoided, and that the important thing was to determine the nature and extent of the rights and duties of States in waters adjacent to the coast and waters in the contiguous zone. In that sense, the Malagasy proposal was very interesting. He also agreed in principle with the Uruguayan statement, which allayed the doubts expressed by the representative of Israel.

Mr. POLLARD (Guyana) said that the draft submitted by his delegation (A/CONF.62/C.2/L.5) had four main objectives, namely: to reflect the existing consensus concerning the delimitation of the jurisdiction of the coastal State, to introduce functional cohesion into the various drafts submitted up to then, to suggest what criterion should be used for the preparation of the draft articles, and to prevent any conflicts in wording. Hence the language used in the draft was carefully chosen. The word "jurisdiction" was used, a generic term, which included all expressions connected with the exercise of authority by the State. The word "jurisdiction" was also in accordance with the provisions of General Assembly resolution 2749 (XXV), which

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(Mr. Pollard, Guyana)

recognized the existence of two zones, one within the other beyond national jurisdiction. For those reasons that word was preferable to any other term. Jurisdiction involved only the legitimate exercise of authority, which implied only the legitimate enjoyment of sovereignty. "Jurisdiction" embraced sovereignty, sovereign right and preferential right, and it was therefore something that unified the various terms used. The wording of the draft in question prejudged one thing only, the extension of the jurisdiction of the coastal State, and it left open for decision by the Committee quality and intensity of State's jurisdiction in its various zones. The draft did not prejudge the question of acquired rights. In regard to the proposal submitted by Spain (A/CONF.62/C.2/L.6) he considered that the use of the word "powers" in the draft was unfortunate and might lead to controversy. His delegation understood the justification for the draft and supported the spirit of the proposal, but it could not accept that word.

The CHAIRMAN said that it was a question of translation and that the word used in the original Spanish was "competencia".

Mr. BEESLEY (Canada) said that what had to be done was to restructure the existing rules, which did not mean rejecting earlier concepts but adapting them to existing realities.

The two traditional principles of sovereignty and freedom of the seas were no longer sufficient and, among other things, did not include the idea of the patrimonial sea or national maritime zone. Special care was needed to co-ordinate concepts and to avoid confusion, as could happen with the principle of the common heritage of mankind, which might mean two things: that its resources should be distributed on a basis of equity, or that they belonged to whoever first gained possession of them.

The aim of the Conference was to devise a system which would be fair to all, so that the convention it was drafting should be ratified by as many States as possible; there should be no hesitation in resorting to other branches of law to identify concepts; for instance, the development of space law in recent years could mean an important contribution to the law of the sea, as both had concepts in common, such as the common heritage of mankind.

In conclusion, he said he agreed with the United Kingdom that the patrimonial sea should find its justification in the concept of equity, and on that basis it might perhaps be possible to avoid all problems of terminology that had arisen.

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The CHAIRMAN, replying to suggestions regarding the method of work of the Committee, said that the Preparatory Committee of the Conference had approved a list of subjects and issues, which had been ratified by the Conference and had served as a basis for assigning items to the three Main Committees. In such circumstances a firm mandate existed to examine specific items. However, the aim of the method of work that had been adopted was to identify conflicting trends concerning different concepts, and he did not think that that list of subjects was a factor likely to inhibit consideration in depth of the principles underlying the concepts.

In the circumstances he did not consider it necessary to change the method of work that had already been approved.

The meeting rose at 12.25 p.m.